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*Shipping & Trading Co., Sharjah, and Five*  
*Seas Shipping Co., LLC, Sharjah*

**FILED**

DISTRICT COURT OF GUAM

JAN 24 2007 *hba*

**MARY L.M. MORAN**  
**CLERK OF COURT**

IN THE DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARWAN SHIPPING & TRADING, CO.,  
FIVE SEAS SHIPPING CO., LLC, AND S.J.  
GARGRAVE SYNDICATE 2724, *in*  
*personam*,

Defendants.

AND CROSS-CLAIMS, COUNTERCLAIMS,  
THIRD-PARTY COMPLAINT, AND CLAIM  
IN INTERVENTION.

CASE NO. 06-00011

**CROSS CLAIM OF MARWAN  
SHIPPING & TRADING  
COMPANY, LLC, SHARJAH  
AND FIVE SEAS SHIPPING  
COMPANY, LLC, SHARJAH,  
AGAINST S.J. GARGRAVE  
SYNDICATE 2724**

COME NOW defendants, counter-claimants and cross-claimants Marwan  
Shipping & Trading Company, LLC, Sharjah ("Marwan") and Five Seas Shipping

CROSSCLAIM OF MARWAN SHIPPING & TRADING COMPANY, LLC,  
SHARJAH AND FIVE SEAS SHIPPING COMPANY, LLC AGAINST S.J.  
GARGRAVE SYNDICATE 2724  
Cause No. 06-00011 - 1

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**ORIGINAL**

Company, LLC, Sharjah ("Five Seas") and for cross-claim against S. J. Gargrave Syndicate 2724 ("Gargrave"), plead and allege as follows:

### **JURISDICTION**

1. This Court has jurisdiction pursuant to 28 USC § 1333 because this case involves the M/V AJMAN 2, a marine certificate of financial responsibility ("COFR") issued with respect to the M/V AJMAN 2, an Oil Pollution Act ("OPA") insurance contract issued with respect to the M/V AJMAN 2, risks in the maritime industry. This Court also has jurisdiction to award the requested declaratory relief pursuant to 28 USC § 2201.

### **PARTIES**

2. Defendant, counter-claimant and cross-claimant Marwan has a place of business in the United Arab Emirates, and was the general agent for the M/V AJMAN 2. Marwan is the named assured on the OPA insurance Policy No. 04HV123X0005 issued by Gargrave.

3. Defendant, counter-claimant and cross-claimant Five Seas has a place of business in the United Arab Emirates, and was the manager of the M/V AJMAN 2. Five Seas applied for the at-issue Certificate of Financial Responsibility ("COFR") on behalf of the M/V AJMAN 2.

4. Cross-claim defendant Gargrave is an unincorporated association of underwriters, organized and existing under the laws of the United Kingdom. Gargrave issued the OPA insurance Policy No. 04HV123X0005 and the COFR to the M/V AJMAN 2 and her owner and operators.

**FACTS**

5. On or about August 18, 2004, the M/V AJMAN 2 sought sanctuary from a Typhoon in Apra Harbor, Guam. The United States Coast Guard required the owners/operators of the M/V AJMAN 2 to secure OPA insurance and a COFR before it would allow the vessel to enter United States waters.

6. On or about August 19, 2004, Gargrave issued Policy No. 04HV1230005 to Marwan providing Marine Oil Pollution Insurance for the M/V AJMAN 2. This insurance, as evidenced by the Cover Note attached hereto as Exhibit 1, expressly covered the period 19 August 2004 to 27 September 2004, and provided limits of US\$3,876,600.

7. On or about 24 August 2004, Gargrave accepted payment from Marwan of the gross premium for the OPA insurance described in paragraph 5 above in the amount of US\$3,465.

8. On or about August 19, 2004, Five Seas applied for a COFR through Environmental Pollution Group, LLC, an agent authorized in the United States to act on behalf of and for Gargrave. See Exhibit 2 attached hereto. The application expressly requested the COFR for the M/V AJMAN 2. On the same date, S.J. Gargrave Syndicate 2724, through its agent EPG, issued the COFR to the M/V AJMAN 2 and her owner and operators. Gargrave is the guarantor on this COFR. Gargrave charged and collected a premium for the COFR.

9. In reliance upon the OPA insurance and the COFR, the M/V AJMAN 2 was allowed to enter Apra Harbor, Guam. On or about August 23, 2004, the M/V AJMAN 2 dragged anchor and ran aground in Apra Harbor. The United States Coast Guard

1 effected removal of the vessel from the beach and has filed this lawsuit seeking to  
2 recover its costs incurred in the removal and pollution abatement operation.

3 10. Marwan and Five Seas timely tendered the defense, indemnity and guarantee  
4 obligations to Gargrave---their OPA insurer and COFR guarantor.

5 11. Gargrave performed little, if any, investigation of the matter, and performed a  
6 minimal and self-serving coverage and guarantor analysis, which culminated in  
7 Gargrave refusing the tender, refusing to honor even its defense obligations, wrongfully  
8 and unsuccessfully seeking rescission of both the OPA insurance and the COFR, and  
9 filing claims against its own insureds---Marwan and Five Seas.

10 **FIRST CAUSE OF ACTION**  
11 **(Breach of Insurance Contract)**

12 12. Gargrave's handling of Marwan's and Five Sea's tender of the defense and  
13 indemnity obligations, as set forth in this cross-claim, breached the OPA insurance  
14 contract. Gargrave has ignored its fiduciary obligations to its insureds and has placed  
15 its interests above those of its insureds. Gargrave is acting in bad faith and is in breach  
16 of contract.

17 13. Marwan and Five Seas complied with all applicable conditions precedent under  
18 the insurance contract that have not been waived by Gargrave. As a direct and  
19 proximate result of Gargrave's bad faith breach of the insurance contract, Marwan and  
20 Five seas have suffered and continue to suffer damages in an amount to be proven at  
21 trial.

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CROSSCLAIM OF MARWAN SHIPPING & TRADING COMPANY, LLC,  
SHARJAH AND FIVE SEAS SHIPPING COMPANY, LLC AGAINST S.J.  
GARGRAVE SYNDICATE 2724  
Cause No. 06-00011 - 4

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1                                   **SECOND CAUSE OF ACTION**  
2                                   **(Breach of COFR Guarantor Obligations)**

3   14.    Gargrave's refusal to honor its' COFR guarantor obligations, as set forth in this  
4   cross-claim, breached the COFR contract.   Gargrave has ignored its fiduciary  
5   obligations and is acting in bad faith and in breach of contract.

6   15.    Five Seas and Marwan complied with all applicable conditions precedent relevant  
7   to the COFR that have not been waived by Gargrave.   As a direct and proximate result  
8   of Gargrave's bad faith breach of its COFR guarantor obligations, Five Seas and  
9   Marwan have suffered and continue to suffer damages in an amount to be proven at  
10   trial.

11                                   **THIRD CAUSE OF ACTION**  
12                                   **(Bad Faith Claims Handling)**

13   16.    Gargrave's handling of Marwan's and Five Seas' tender of the United States'  
14   lawsuit, as set forth in this cross-claim, including its failure to conduct an adequate  
15   investigation and assessment of its coverage obligations, constitutes the tort of bad  
16   faith.   Gargrave has ignored its fiduciary obligations to its insureds and has placed its  
17   interests above those of its insureds.   Gargrave has acted and is acting in bad faith.

18   17.    As a direct and proximate result of Gargrave's bad faith claims handling, Marwan  
19   and Five Seas have suffered and continue to suffer damages in an amount to be proven  
20   at trial.

21                                   **PRAYER FOR RELIEF**

22   1.    All damages legally available for Gargrave's breach of contract.  
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2. All damages legally available for Gargrave's breach of its guarantor obligations under the COFR.

3. All damages proximately caused by Gargrave's bad faith.

4. Punitive damages.

5. A declaration that the defense obligations for the OPA insurance Policy No. 04HV1230005 have been triggered, that coverage does exist for any liabilities which might be assessed against Marwan and/or Five Seas, and that Gargrave has acted in bad faith and in breach of contract in refusing Marwan and Five Seas tender of the defense and indemnity obligations as respects the lawsuit brought by the United States.

6. An award of attorney's fees and costs incurred by Marwan and Five Seas in having to undertake their own defense of the United States' lawsuit, in having to defend against the cross-claims brought by Gargrave, and in having to prosecute this coverage action against Gargrave.

7. Such other relief as the Court considers legal or equitable.

DATED this 24<sup>th</sup> day of January, 2007.

**TEKER TORRES & TEKER, P.C.**

By:   
**LAWRENCE J. TEKER, ESQ.,**  
Attorneys for Defendants **Marwan and Five Seas**